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February 13, 2015

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VIA ECF

Honorable Katherine B. Forrest
 United States District Court
 Southern District of New York
 500 Pearl St.
 New York, NY 10007-1312

Re: National Credit Union Administration Board, et al. v. U.S. Bank National Association, et al.
 Case No. 14-cv-9928

Phoenix Light SF Limited, et al. v. U.S. Bank National Association, et al.
 Case No. 14-cv-10116

(Rel. 12-cv-2865-KBF)

Your Honor:

I write on behalf of Bank of America, N.A. (“BANA”), defendant in the above-captioned *National Credit Union Administration* (“NCUA”) and *Phoenix Light SF Limited* (“*Phoenix Light*”) actions, in response to the Court’s February 6, 2013 Order requesting the parties’ views as to whether plaintiffs’ Trust Indenture Act (“TIA”) claims are subject to dismissal under the Second Circuit’s decision in *Ret. Bd. of the Policemen’s Annuity & Ben. Fund of the City of Chicago v. Bank of New York Mellon*, No. 13-1776-CV, 775 F.3d 154 (2d Cir. 2014) (“*BNYM*”).

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It is BANA's view that, under *BNYM*, plaintiffs' TIA claims as to all of the trusts at issue in *NCUA* and *Phoenix Light* are subject to dismissal. *NCUA* and *Phoenix Light* assert claims against BANA on two kinds of trusts: (1) New York common law trusts created by Pooling and Servicing Agreements ("New York PSA Trusts"); and (2) Delaware statutory trusts that issue certificates pursuant to PSAs (or Transfer and Servicing Agreements) ("Delaware PSA Trusts"). Under *BNYM*, the TIA does *not* apply to New York PSA Trusts or the Delaware PSA Trusts. Indeed, plaintiffs have conceded that their TIA claims on the Delaware and New York PSA Trusts are subject to dismissal. *See NCUA Amended Complaint at ¶ 15 n.2* ("In its [*BNYM*] order, the Second Circuit held that residential mortgage-backed securities ('RMBS') certificates issued pursuant to pooling and servicing agreements ('PSAs') are not covered by the TIA because they fall under TIA § 304(a)(2), which exempts 'any certificate of interest or participation in two or more securities having substantially different rights and privileges.' 15 U.S.C. § 77ddd(a)(2). Plaintiffs have kept their TIA claims in this Amended Complaint to preserve their appellate rights.").

BANA also believes that the complaints should be amended to remove the TIA claims and all allegations based upon those claims. The TIA allegedly imposes duties beyond those assumed by BANA as Trustee under the governing agreements for each trust, but numerous allegations throughout the complaints conflate alleged TIA duties with alleged contract duties. This lack of clarity will impede defendants' responses to the complaints, and may present challenges for the Court in evaluating motions to dismiss. Accordingly, BANA respectfully requests that the Court order plaintiffs to amend the complaints in *NCUA* and *Phoenix Light* to excise the TIA claims and all allegations regarding the duties that plaintiffs claim the TIA imposes.

Very truly yours,



Jacob S. Kreilkamp

cc: All counsel of Record (by CM/ECF)